

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



**75-1323**

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

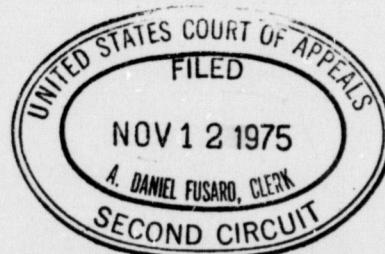
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UNITED STATES OF AMERICA, : UNITED STATES DISTRICT  
Plaintiff-Appellee, : COURT OF THE SOUTHERN  
-against- : DISTRICT OF NEW YORK.  
WYADELL EDMONDS, : CASE NO. 75-1323  
Defendant-Appellant : A P P E N D I X  
-----x

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ARK:jp  
USA-33s-528 - IND/INF - POSSESSION WITH INTENT TO DIST. NARC DRUG  
Rev. 5-27-72

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X

UNITED STATES OF AMERICA :

INDICTMENT

-v-

74 Cr. 474

WYADELL EDMONDS, :

:

Defendant. :

X

The Grand Jury charges:

On or about the 1st day of May, 1974

in the Southern District of New York,

WYADELL EDMONDS,

the defendant , unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately eleven grams of heroin.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

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FOREMAN

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PAUL J. CURRAN  
United States Attorney

JUDGE OWEN

74CRH. 474

## TITLE OF CASE

## ATTORNEYS

THE UNITED STATES

For U.S.:

vs.

WYADELL EDMONDS

Alan R. Kaufman, AUSA.

264-6433

ONLY COPY AVAILABLE

For Defendant:

## ABSTRACT OF COSTS

## AMOUNT

## CASH RECEIVED AND DISBURSED

## DATE

## NAME

## RECEIVED

## DISBURSED

(07)

Fine,

Clerk, JS3 - ✓

Marshal,

Attorney,

XXMMXXXX 21

XXMMXX812,841(a)(1),(b)

Distr. &amp; possess. w/intent to distr.

Heroin, I.

(One Count)

## DATE

## PROCEEDINGS

5-10-74 Filed indictment.

5-13-74 Deft. (atty. present) ~~Present~~. Pleads not guilty. Motions returned in 10 days. Bail previously fixed by Mag. continued. (\$5,000. cash or surety). Deft. continued remanded in lieu of bail. Case assigned to Judge Owen for all purposes. Gurfein, J.

5-22-74 DEFT. PRESENT WITH ATTY(Roland Thau Legal Aid) for Pre Trial Conference suppression hearing to be held on 6/10/74 at 10:00 a.m. in room 1505. Bail continued Deft.

Remainder Remanded. Owen J.

6-10-74 Suppression hearing adj. until June 20th, 1974 at 3:00 P.M. - Owen J.

-over-

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
7-10-74	Suppression hearing held (deft. & atty. Roland Thau present). Hearing is adj. sine die.....Owen,J.		
8-23-74	Filed Govt's notice of readiness for trial on or after 9-24-74.		
8-29-74	Filed transcript of record of proceedings dated 7-10-74.		
9-10-74	Suppression hearing continued and concluded. Decision reserved. Bail continued. ....Owen,J.		
9-16-74	Filed OPINION #41171-Upon holding a suppression hearing the Court concludes that the informant was both reliable and credible, the arrest was lawful and the search seizure incident thereto was also lawful. Def't.s. motion to suppress is denied. So Ordered.....Owen,J. (mailed notice).		
9-27-74	Pre-trial conference held. (Deft. not present). Trial date set for Nov. 18th, 1974 at 10:00 A.M.....Owen,J.		
10-2-74	Filed the following papers received from Magistrate Raby. (Mag.#74-558): Docket Entry Sheet Criminal Complaint, S.D.N.Y. Disposition Sheet Financial Affidavit Appointment of Counsel Temporary Commitment Appearance Bond in the sum of \$5,000.00-Public Service Mutual Insurance Company.		
10-16-74	Deft. present-with atty. Roland Thau. B/W Vacated. Bail Continued.....Owen,J.		
12-3-74	Deft. present for trial. Deft. asks that Roland Thau not represent him (deft.) Motion granted. Edmonds representing himself with Mr. Thau present to aid him if asked to by deft. Panel sworn & voire dire begun.		
12-4-74	Trial continued. (voire dire concluded). Jury sworn.		
12-5-74	Trial continued.		
12-6-74	Trial continued & Roland Thau now representing deft. at deft's. request & Court's direction. Jury begins deliberations until 11:00 P.M.		

-over- Continued on Page #3

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judge
12-9-74	Trial continued. Jury returns to continue deliberations. Hung Jury. Motion by deft's. counsel for mistrial is granted. Jury dismissed. To be re-tried on day uncertain at this time.....Owen, J.	
12-17-74	Filed transcript of record of proceedings dated 9-10-74.	
2-24-75	Filed transcript of record of proceedings dated December 5 through 9, 1974.	
3-3-75	Deft. present with legal aid attorney Roland Thau trial re-set for March 31st at 10:A.M. room 905- Bail conyinued..... Owen, J.	
4-1-75	Pre-trial conference held. Trial adj. sine die .....Owen, J.	
4-7-75	Filed MEMORANDUM ORDER adjourning trial date until 4-21-75.....Owen, J. (mailed no	
5-1-75	Filed Govt's. affidavit for a writ of habeas corpus directed to Sheriff, Norfolk, Virginia. Writ issued, ret. 5-5-75.	
5-28-75	Filed transcript of record of proceedings dated 6-22-74.	
5-28-75	Filed transcript of record of proceedings dated 10-16-74.	
5-28-75	Filed transcript of record of proceedings dated 9-27-74.	
5-28-75	Filed transcript of record of proceedings dated 12-6-74.	
5-28-75	Filed transcript of record of proceedings dated 3-3-75.	
5-22-75	Trial adjourned until 5-27-75 at 10:30 AM.....Owen, J.	
5-27-75	Deft. present with attorney Kussler for trial. Jury empanelled & sworn...	
5-28-75	Deft. Produced on writ. Opening statements - Trial begun & continued. Writ adjourned until 5-29-75.	
5-29-75	Deft. produced on writ. Trial continued. Writ adjourned until 5-30-75.	
5-30-75	Deft. produced on writ. On deft's. motion he is removed from court room to cell block for remainder of trial. Trial continued & concluded. Verdict - Guilty as charged. Bail revoked. Pre-sentence investigation ordered. Sentence 7-9-75. Writ adjourned until sentence date of July 9th at 2:00 P.M.....Owen, J.	
6-20-75	Deft. in court with attorney Kessler on application for new court appointed counsel for sentencing July 9th at 2:00 P.M. application granted counsel to be appointed. ....Owen, J.	
7-8-75	Filed Defts. affidavit and notice of motion for an order suppressing all tangible property seized frm deft. & U.S. Atty. make Sarah Robertson & Ronnie Evans available for interview. Ret. 5-19-75.	
7-8-75	Filed Affidavit by Lawrence W. Kessler in support of motion for a new trial.	
7-22-75	Filed transcript of record of proceedings dated 4-1-75.	
7-24-75	Filed deft's. affidavit & notice of motion for bail pending sentencing & appeal, to extend the time on which post trial motions may be had and for inspection of the pre-sentence investigation report, ret. 7-25-75.	

DATE	PROCEEDINGS	Date O Judgme
7-24-75	Filed MEMO ENDORSED on deft's. motion filed 7-24-75. Application for bail is denied. Return date for making post trial motions is extended to 8-18-75. Application for inspection of the pre-sentence investigation report is granted. .... Owen, J. (mailed notice)	
7-30-75	Filed transcript of record of proceedings dated 5-22-75.	
7-30-75	Filed transcript of record of proceedings dated May 27, 29, 30, 1975.	
8-5-75	Filed CJA Form 21 Copy 5 appointing D.C. Boone as investigator, dated 7-23-75. .... Owen, J.	
8-5-75	Filed CJA Form 21 Copy 2 approving payment to D.C. Boone, dated 7-23-75.... Owen, J.	
8-5-75	Filed CJA Form 21 Copy 5 appointing Ascanio E. Radano as investigator, dated 7-23-75. .... Owen, J.	
8-18-75	Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWELVE (12) YEARS. Pursuant to provisions of Title 21, Section 841, U.S. Code, the deft. is placed on SPECIAL PAROLE for a term of (3) YEARS, to commence upon the expiration of his confinement..... Owen, J. Issued commitment 8-19-75.	
8-20-75	Filed deft's. Pro Se motion to dismiss the indictment.	
8-20-75	Filed MEMO END. on deft's. motion to dismiss the indictment. Motion denied according to the minutes of 8-18-75..... Owen, J. (notice mailed by Pro Se Clerk)	
8-20-75	Filed deft's. Pro Se motion to correct illegal sentence.	
8-20-75	Filed MEMO END. on deft's. motion to correct illegal sentence. Motion denied according to the minutes of 8-18-75..... Owen, J. (notice mailed by Pro Se Clerk)	
8-25-75	Filed deft's. notice of appeal from the judgment of conviction entered on 8-18-75 and MEMO ENDORSED. Deft's. application to proceed on appeal in forma pauperis is granted..... Owen, J. (copies mailed to W. Kirkland Taylor, 2580 7th Ave., N.Y.C. 10039 and U.S. Attorney's Office.)	
8-29-75	Filed deft's. pro se ancillary motion to correct illegal sentence.	
9-3-75	Filed transcript of record of proceedings dated 8-18-75.	
9-9-75	Filed deft's. 2nd ancillary motion in support of motion to reduce sentence.	
9-17-75	Filed deft's. pro se motion to withdraw appeal without prejudice.	
9-18-75	Filed writ of habeas corpus directed to Sheriff, Norfolk City Jail with marshal's return. Writ returned - Charges Nolled.	
9-23-75	Filed deft's. affidavit & notice of motion for reduction of sentence, ret. 9-26-75	

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2 Kessler is a nice guy or I'm a nice guy, your duty is to look  
3 at the evidence and to consider that evidence carefully, to  
4 view it over, to look at it from every different direction  
5 and say, "Is there really a reasonable doubt?" Not some  
6 guess, not some twisting of what was said, but is there  
7 really a reasonable doubt?

8 I submit to you on the record before you in this  
9 case, there is no reasonable doubt and I ask you to return a  
10 verdict of guilty.

11 THE COURT: The Court is about to charge the  
12 jury. All spectators wishing to leave may do so now or remain  
13 seated until the completion of the charge.

14 Mr. Marshal, please lock the door.

15 Now, ladies and gentlemen, we are at that stage  
16 of the trial where you will soon undertake your final function  
17 as jurors. As I said to you at the time you were chosen,  
18 I'm sure, you will here be performing one of the most sacred  
19 and valuable obligations of citizenship, which is to act as  
20 ministers of justice in this case and to determine what the  
21 facts are between these parties.

22 The fact that this trial was not of extremely  
23 long duration does not mean that it is unimportant. Whether  
24 it takes a day, a week or a month, every case is important.  
25 This case is important to the government because the enforcement

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2 of the criminal laws is a matter of prime concern to the  
3 community and to its welfare. Equally, it is important to the  
4 defendant, Mr. Edmonds, who is here charged with the commission  
5 of a serious crime.

6 Let me quickly add the fact that the government  
7 as a party entitles it to no greater nor any lesser considera-  
8 tion than that accorded to any other party to any litigation.  
9 All parties, government and individuals alike, stand as  
10 equals before this bar of justice.

11 Now, your final role is to decide and pass upon  
12 the fact issues here. You are the sole and the exclusive  
13 judges of those facts. You determine the weight of the evi-  
14 dence, you appraise the credibility of the witnesses, you  
15 draw whatever reasonable inferences may be warranted from  
16 the facts as you determine them and you resolve such con-  
17 flicts as you may find in the evidence.

18 I shall later refer to how you may be assisted  
19 in determining the credibility or believability of  
20 witnesses.

21 My final function is to instruct you on the law,  
22 and it is your duty to accept these instructions on the law  
23 and apply them to the facts as you may find them.

24 With respect to any fact matter, it is your  
25 recollection and yours alone that governs.

2 As I have already mentioned, anything that any  
3 lawyer either for the prosecution or the defense may have said  
4 with respect to matters of evidence, whether during the  
5 trial, in a question, in the opening in this case or in any  
6 summation, is not to be substituted for your own recollection  
7 of the evidence.

8 So, too, anything that I may have said during  
9 the trial or may refer to during the course of these instruc-  
10 tions as to any matter in evidence is not to be taken in  
11 place of your own recollection.

12 Before we consider the precise charges, let us  
13 turn to some preliminary matters.

14 There are certain principles of law that apply  
15 in every criminal case and to which I made some reference,  
16 I'm sure, at the time you were selected. I will repeat them  
17 now.

18 The indictment is merely a piece of paper. It is  
19 only a charge. It is no evidence or proof of the defendant's  
20 guilt and no weight should be given whatsoever to the fact  
21 that an indictment exists in this case.

22 The defendant has pleaded not guilty and, thus,  
23 the government at all times has the burden of proving the  
24 charges against him beyond a reasonable doubt. The defendant  
25 does not have to prove his innocence. He does not have to

2 prove anything at all. On the contrary, he is presumed to  
3 be innocent of the charges contained in the indictment. This  
4 presumption of innocence was in his favor at the start of  
5 the trial, it continued in his favor throughout the trial,  
6 it is in his favor even as I instruct you and speak to you  
7 at this very moment. It remains in his favor during the  
8 course of your deliberations in the jury room. The presump-  
9 tion of innocence is removed only if and only when you are  
10 satisfied that the government has sustained its burden of  
11 proving the guilt of the defendant beyond a reasonable doubt.

12 Now, the question that comes up is, what is a  
13 reasonable doubt?

14 The words almost define themselves. That there  
15 is a doubt founded in reason and arising out of the evidence  
16 in the case, or the lack of evidence, as the case may be. It  
17 is a doubt which a reasonable person has after weighing all  
18 the evidence. A reasonable doubt is a doubt which applies  
19 to your reason, to your judgment, your common sense and your  
20 experience.

21 Reasonable doubt is not caprice, whim, speculation,  
22 conjecture or suspicion. It is not an excuse to avoid the  
23 performance of an unpleasant duty. It is not sympathy for  
24 a defendant.

25 If, after a fair and impartial consideration of

2 all the evidence, you can candidly and honestly say that you  
3 are not satisfied of the guilt of the defendant, that you do  
4 not have an abiding conviction of the defendant's guilt, in  
5 sum, if you have such doubt as would cause you as prudent  
6 persons to hesitate before acting in matters of importance  
7 to yourself, then you have a reasonable doubt, and in that  
8 circumstance it is your duty to acquit.

9           If, on the other hand, after such an impartial  
10 and fair consideration of all the evidence you can candidly  
11 and honestly say that you do have an abiding conviction of the  
12 defendant's guilt, such a conviction as you would be willing  
13 to act upon in important and weighty matters in the personal  
14 affairs of your own life, then you have no reasonable doubt  
15 and under such circumstances it is your duty to convict.

16           One final word on this subject:

17           A reasonable doubt does not mean a positive  
18 certainty or beyond all possible doubt. If that were the  
19 case, few persons, however guilty, would be convicted. It is  
20 practically impossible for a person to be absolutely and  
21 completely convinced of any controverted fact which, by its  
22 nature, cannot be proved with mathematical certainty.

23           In consequence, the law in a criminal case is  
24 that it is sufficient if the guilt of a defendant is established  
25 beyond a reasonable doubt, not beyond all possible doubt.

2           Against this general background let us turn to  
3       the specific law which it is charged the defendant here violated.  
4       Let me say parenthetically, we are not trying the subject of  
5       drugs generally, whether they are good or bad. You are here  
6       only to determine the guilt or innocence of this defendant  
7       on the specific charge against him.

8           Now, the specific law which it is charged the  
9       defendant here violated is provided by an act of Congress,  
10      which reads in part as follows:

11           "It shall be unlawful for any person knowingly  
12      or intentionally to possess with intent to distribute a  
13      controlled substance."

14           Under another section of the law, heroin is  
15      set forth as a controlled substance.

16           The act was enacted by Congress in an effort to  
17      combat the illegal importation, distribution, possession and  
18      improper use of narcotic drugs which have a substantial and  
19      detrimental effect upon the health and welfare of the  
20      American people.

21           Now let's turn to the indictment, which reads as  
22      follows:

23           "On or about the 1st day of May, 1974, in the  
24      Southern District of New York" -- and I charge you as a matter  
25      of law that Manhattan, which is the County of New York, is

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2 within the Southern District of New York -- "Wyadell Edmonds,  
3 the defendant, unlawfully, intentionally and knowingly did  
4 possess with intent to distribute a Schedule I narcotic  
5 drug controlled substance, to wit, approximately eleven grams  
6 of heroin."

7 In order to find the defendant guilty, the  
8 government must establish and you must conclude beyond a  
9 reasonable doubt the following elements:

10 First, that on or about May 1, 1974, the  
11 defendant possessed with intent to distribute a controlled  
12 substance, in this case heroin.

13 Second, that he did so unlawfully, willfully and  
14 knowingly.

15 And third, that the substance contained in Govern-  
16 ment's Exhibit 1-B and 1-C are, in fact, a controlled sub-  
17 stance, heroin.

18 Now let me say a few words about these elements:

19 The first element is possession with intent to  
20 distribute. What does that mean?

21 The word "distribute" means to transfer the  
22 heroin. The word "possess" has its common everyday meaning,  
23 that is, to have something within your control. To have  
24 something within your control does not necessarily mean you  
25 have it in your hand or in your pocket. As long as it is under

2 your control you possess it. The word "intent" refers to a  
3 person's state of mind. So the term "possess with intent to  
4 distribute" can fairly be stated to mean to control an item  
5 with the state of mind or purpose or intention of transferring  
6 the item.

7 To elaborate on the term "possess," this means to  
8 have something within one's control, as I have said. To  
9 have something within one's control can be either physical  
10 or constructive. Actual physical custody meets this requirement,  
11 and, in this case, the government contends that the proof  
12 shows that the defendant had actual physical possession of the  
13 heroin when it was in the suitcase which he carried into the  
14 Port Authority terminal in New York City.

15 As you deliberate on possession with intent to  
16 distribute, I charge you that knowledge and intent, obviously,  
17 exist in one's mind. Since it is not possible to cut open  
18 a man's head and see what went on, the only way you have for  
19 arriving at a decision in these questions is for you to take  
20 into consideration all of the facts and circumstances shown  
21 by the evidence in the case, including the exhibits, and  
22 determine from all those facts and circumstances whether the  
23 necessary knowledge and intent were present at the time, that  
24 is, did the defendant possess with intent to distribute  
25 heroin, if you should so find these other facts beyond a

2 reasonable doubt.

3                   Direct proof of this is unnecessary. Knowledge  
4 and intent may be inferred from all the surrounding circum-  
5 stances, including statements the defendant made, if you  
6 find that he, in fact, made them.

7                   As far as intent is concerned, I instruct you  
8 that a person is presumed to intend the natural and probable  
9 or ordinary consequences of his acts.

10                  As to the second element, the terms "unlawfully,"  
11 "willfully," and "knowingly," those mean that you must be  
12 satisfied beyond a reasonable doubt that Edmonds knew what  
13 he was doing and that he did it deliberately and voluntarily  
14 as opposed to being set up or mistaken or it being an accident  
15 or some other cause.

16                  Of course, it is not necessary for the government  
17 to show that the defendant knew he was violating any particular  
18 law, rather, it is sufficient if you are convinced beyond a  
19 reasonable doubt that he was aware of the general unlawful  
20 nature of his acts.

21                  As to the third element, the indictment charges  
22 that the narcotic drug controlled substance is heroin.

23                  I instruct you as a matter of law that heroin is  
24 a narcotic controlled substance. You, however, as the jury  
25 must nevertheless find beyond a reasonable doubt that the sub-

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2 stance here is, in fact, heroin before you are satisfied on  
3 that item of the charge. There is a stipulation in evidence  
4 from which the government urges that you can find that element

5 In this connection, I would like to point out  
6 that the indictment charges that the defendant possessed  
7 approximately eleven grams of heroin.

8 Incidentally, you have a right to take this indict-  
9 ment with you into the jury room if it is your desire.

10 The evidence in this case adduced by the government  
11 was that the amount of heroin was, in fact, 8.4 grams.

12 It is necessary for you to be satisfied on  
13 this element to find that there was this amount of heroin,  
14 that is, 8.4 grams, and if you are satisfied of that beyond  
15 a reasonable doubt, then I charge you that the difference  
16 between the 8.4 grams and the 11 grams charged in the indictment  
17 is what is called an immaterial variance.

18 Now, the parties have well and fully argued  
19 before you and perhaps to give a little focusing of your  
20 attention I am going to recite what their contentions are so  
21 that you may have them clearly in mind.

22 The government contends that Edmonds was carrying  
23 heroin to Virginia intending to sell it there. The government  
24 contends it has proved his guilt beyond a reasonable doubt.  
25 The government contends it has proved this by, among other

2 things, the testimony of agents who say they saw him come  
3 into the Port Authority terminal with a suitcase, that it  
4 was in his hand at the time of his arrest and that later  
5 heroin was found in it upon inspection at the Drug Enforcement  
6 headquarters.

7 The government contends that Mr. Edmonds' knowledge  
8 that this heroin was in this suitcase is proved by such state-  
9 ments as, "Let her go, she knows nothing about it," and other  
10 statements which have been argued to you.

11 The government contends that it has proved that  
12 the defendant possessed this heroin with intent to distribute  
13 it by at least two things:

14 First, the fact that there were these cutting  
15 agents in the suitcase along with the heroin, which, in the  
16 narcotics trade, have a use in reducing heroin in its purity  
17 to get it down to a street level for sale and, second, the  
18 government contends that the statements of Mr. Edmonds to  
19 Mr. Christian as to which Mr. Christian testified at or  
20 around the time of the trip to Norfolk were proof of Mr.  
21 Edmonds knowing he was going and his acknowledgements later  
22 that he had been arrested for this and, thirdly, the govern-  
23 ment contends that the statement in the tape recording about  
24 going to Virginia to make money is proof that Mr. Edmonds  
25 knew that the heroin was in there and that he possessed it

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2 with intent to sell.

3 On this and other evidence, the government  
4 contends that it has proven its case to you beyond a reason-  
5 able doubt.

6 Now, the defendant has denied all of this. He  
7 contends that the evidence against him consisted of, one,  
8 the uncorroborated testimony of Mr. Christian that he had  
9 recorded and unrecorded conversations with Mr. Edmonds and  
10 that the voice on the tape is Mr. Edmonds.

11 Second, Mr. Edmonds contends that the testimony  
12 of the police officers that Mr. Edmonds had a valise in which  
13 the drugs were found and that he made incriminating statements  
14 is not to be credited, that that testimony is replete with  
15 contradictions and it includes, the defendant contends, an  
16 admission of a false statement under oath.

17 The defendant contends that this testimony is  
18 not sufficient proof beyond a reasonable doubt. The conten-  
19 tion is the testimony of Mr. Christian is both riddled with  
20 incredible statements and motivated by the desire to escape  
21 a lengthy jail sentence. The defendant contends that Mr.  
22 Christian's testimony is not truthful. The contention is  
23 that without his testimony there is no identification of the  
24 voice heard on the tape as that of Mr. Christian.

25 The defendant contends that the testimony of the

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2 police officers is dependent upon the statements of an unknown  
3 informant as to Mr. Edmonds' knowledge that the drugs were  
4 in the suitcase containing the possessions of two people, and  
5 the defendant contends that Mr. Edmonds' supposed admissions  
6 are not to be found in the police reports and are contradicted  
7 by other officers.

8 These are the defendant's contentions.

9 I have not made any extensive reference to the  
10 evidence in this case. I have not done this because the  
11 trial has not been very extensive and the attorneys have  
12 made good and full reference to it in their summations and  
13 I'm sure it is fresh in your mind. But I do want to say  
14 that all the evidence in this case, whether referred to or  
15 not by me or by anybody else, or the lack of evidence, as  
16 the case may be, is important for you to consider and must  
17 be considered by you.

18 You are called upon, as I say, to decide the  
19 fact issues, that is what happened.

20 One issue you may have to decide along the way  
21 is that of the credibility or believability of witnesses  
22 which you have heard.

23 Your determination on this issue must largely  
24 depend on the impression that a particular witness or  
25 witnesses made upon you, whether the witness was telling you

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2 the truth or giving you an accurate version of what occurred.

3 As I said at the beginning, when you walk into  
4 this courtroom and you take a seat in this jury box, you  
5 do not leave your common sense or your experience in the hall-  
6 way, so you apply that in deciding whether or not a witness  
7 was straightforward and truthful, whether the witness attempted  
8 to conceal something, whether the witness had a motive to  
9 testify falsely, whether there was any reason why a witness  
10 might color his testimony.

11 The defendant has argued that Mr. Christian had  
12 such a motive to testify falsely. Has he testified falsely?  
13 That is for you to decide.

14 A witness may be inaccurate, may be contradictory  
15 or even untruthful in some respect and yet be entirely  
16 believable in the essentials of his testimony.

17 The ultimate question for you to decide in passing  
18 upon the believability of any witness or witnesses is, did  
19 the witness tell the truth here before you as to essential,  
20 material, important matters?

21 It is for you to say whether a witness at this  
22 trial was truthful in whole or in part in the light of his  
23 demeanor and all the evidence in the case.

24 If you find that any witness testified falsely  
25 as to any material fact, you have the right to reject that

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2 witness' testimony in its entirety, or you may accept that  
3 part or portion of it which commends itself to your belief  
4 and reject the rest. You may accept that part or portion  
5 which you may find is corroborated by other evidence in the  
6 case.

7                 In addition to the testimony of Mr. Christian,  
8 who is the principle source of proof of a conversation  
9 in January, 1975, in an apartment at 101 West 136th Street,  
10 there is also in evidence a tape recording which Mr. Christian  
11 says was made of that meeting. There is also a transcript  
12 that has been prepared of that tape recording which you have  
13 seen.

14                 In this connection, I charge you that the tape  
15 recording itself is the actual evidence and that the transcript  
16 is merely an aid to you as the jury in listening to the tape.  
17 It is not evidence itself, the tape is the evidence to be  
18 considered.

19                 The defendant, Mr. Edmonds, has not testified  
20 here, and I want to say as forcefully as I can that this is  
21 his absolute right, and in respect to any such election not  
22 to testify, nothing may be considered by you as to that  
23 election, nothing may be considered by you thereby as any  
24 evidence against him. You must not permit that fact to  
25 enter into your thoughts, your deliberations or your discussions

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2 in the slightest degree, nor should you, in the slightest  
3 degree, give any consideration to the matter of the defendant  
4 breaking into his counsel's summation to you. Put that  
5 incident entirely from your minds. Do not consider it,  
6 do not discuss it.

7 Now, to convict, you must find that the government  
8 has proven the essential elements of the charge here, each  
9 of the three, beyond a reasonable doubt.

10 If the government has proved the essential  
11 elements, your verdict should be guilty. If it has not, your  
12 verdict should be not guilty.

13 Your function is to weigh the evidence and  
14 determine the guilt or innocence of the defendant solely upon  
15 the basis of the evidence or such lack of it as you may  
16 find appropriate and upon these instructions on the law.

17 Under your oath as jurors you cannot and should  
18 not and must not allow any consideration of any sentence  
19 which may be imposed upon the defendant, if convicted, to  
20 enter into your deliberations in any way or to influence your  
21 verdict in any way. Your duty, ladies and gentlemen, is  
22 solely to decide this case upon the evidence. In the event  
23 of a conviction, the duty of imposing sentence rests  
24 solely with the Court.

25 Each juror is entitled to his or her own opinion.

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2 Each should, however, exchange views with fellow jurors.  
3 That is what jury deliberation is all about. You should dis-  
4 cuss and consider the evidence, listen to the arguments of  
5 fellow jurors, present your individual views, consult with  
6 one another and reach an agreement based solely and wholly  
7 upon the evidence.

8 You should not hesitate to change an opinion  
9 which, after discussion with your fellow jurors, appears  
10 to you to be erroneous. However, if, after carefully consider-  
11 ing all the evidence, all the arguments of your fellow jurors,  
12 you entertain a conscientious and honest belief that differs  
13 from the others, you are not to yield that belief simply  
14 because you are outnumbered or outweighed. Your final vote  
15 must reflect your conscientious conviction as to how the  
16 issue should be decided.

17 Finally, to record a verdict, it must be unanimous.  
18 That concludes my charge on the law, ladies and  
19 gentlemen.

20 Do you have any matters you would like to bring  
21 to my attention?

22 MR. SEAR: Yes, your Honor.

23 THE COURT: All right. Just stay in place for a  
24 moment.

25 We will retire to the robing room.

2 (In the Robing Room - counsel present)

3 MR. SEAR: Just a brief comment that the jury  
4 be told that they can take the evidence, other than the  
5 drugs, into the jury room and with reference to the tape  
6 recording they can come out and hear it if they want to.

7 THE COURT: All right.

8 MR. SEAR: With the drugs, your Honor, it would  
9 specifically be that they could look at them.

10 THE COURT: All right.

11 Mr. Kessler?

12 MR. KESSLER: Nothing, your Honor.

13 (In open court - jury present)

14 THE COURT: Ladies and gentlemen, just one final  
15 observation.

16 You may, of course, call for the exhibits should  
17 you desire them and you may do that by sending a note. You  
18 will be in the custody of the marshal and, Madam Forelady, you  
19 give the marshal a note and tell him what it is you want.

20 If you want to examine exhibits 1-B and 1-C, which  
21 are the brown packages, or you want to hear the tape recording,  
22 let us know that and we will cause you to be assembled here  
23 for that purpose.

24 With those instructions, at this point, Miss  
25 Hays and Mrs. Mitchell, we have come to the point where I

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2 must excuse you from further service as alternate jurors.

3 I want to thank you for your careful attention. You are  
4 excused.

5 (Two alternate jurors excused)

6 (A marshal was duly sworn by the Clerk of the  
7 Court.)

8 (At 2:40 p.m., the jury left the courtroom to  
9 deliberate upon a verdict.)

10 THE COURT: We haven't got all that many exhibits,  
11 but I would suggest all except Exhibit 1-B and C be given to  
12 the clerk and as they are called for they can be sent right  
13 in.

14 MR. KESSLER: Your Honor, there is the matter of  
15 screening the part of A-1 that is not in evidence.

16 THE COURT: Yes. How about Mr. Sear taking a  
17 pair of scissors and cutting that out and just stapling  
18 on a blank back.

19 MR. SEAR: I think that would be much easier to  
20 do, your Honor, than finding a Xerox machine.

21 THE COURT: Let us do that.

22 (At 4:30 p.m., in open court; jury present)

23 THE COURT: I have a note, Exhibit 6, which says  
24 that you have reached a verdict.

25 THE FORELADY: Yes, we have, your Honor.

2 THE COURT: What is your verdict?

3 THE FORELADY: Your Honor, we, the members of  
4 the jury, find the defendant guilty.

5 THE COURT: All right.

6 Will you poll the jury.

7 THE CLERK: Members of the jury, you say you  
8 find the defendant guilty, and so say you all.

9 (Each juror, upon being asked, "Is that your  
10 verdict?" answered in the affirmative.)

11 THE COURT: Mr. Kessler, have you anything you  
12 would like to ask me before I discharge the jury?

13 MR. KESSLER: No, your Honor.

14 THE COURT: Very good.

15 Ladies and gentlemen, I want to thank you for your  
16 jury service and I want to thank you for the careful attention  
17 I noticed you gave to the proof as it was going in.

18 In my judgment on this record, your verdict was  
19 eminently justified, and I trust you will take satisfaction  
20 in the service that you performed.

21 You are excused with my thanks.

22 (Jury Excused)

23 THE COURT: I am going to revoke bail as things  
24 presently exist, and I will order a presentence report here.

25 You may have until the date of sentence to make

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2 motions, Mr. Kessler, if you are of a mind to.

3 MR. KESSLER: Your Honor, it seems to me that  
4 at this point the question of my continued representation  
5 of Mr. Edmonds should be addressed.

6 I can understand why the Court wished me to  
7 continue the rest of the summation, but since Mr. Edmonds  
8 has clearly declined to talk to me, I think that the question  
9 of whether I can continue to represent him at sentence is  
10 a serious matter.

11 I will endeavor to talk to him if the Court  
12 wishes once more and see what his desires are, but --

13 THE COURT: I would appreciate it if you would  
14 do that.

15 He is in the marshal's pen. I think it might  
16 be a good idea if you can go down there now and advise  
17 him that the jury has found him guilty and what does he have  
18 in mind to do.

19 MR. KESSLER: I will do that, your Honor.

20 THE COURT: I would appreciate it if you would  
21 let me know in some fashion, either by letter or personally,  
22 however is convenient to you.

23 MR. KESSLER: I will do that.

24 THE COURT: Off the record.

25 (Discussion off the record)

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2 THE COURT: For sentencing, is sometime in the  
3 week of the 6th of July a good week? Is everybody here?

4 I am leaving on the 12th.

5 MR. KESSLER: I will be here, your Honor.

6 THE COURT: You will be here.

7 The 11th is the last day and is a bad day.

8 Suppose we are to make it at two o'clock on the  
9 9th.

10 MR. SEAR: I believe I will be here, your Honor,  
11 so that will be fine.

12 THE COURT: All right, two o'clock on the 9th  
13 of July, and I will order a presentence report. We will be  
14 in courtroom 501.

15 As I say, bail is revoked.

16 I trust somebody will communicate that to West  
17 Street.

18 MR. SEAR: Yes, your Honor, I will take care of  
19 that.

20 THE COURT: All right.

21

22

23

24

25

1                   WITNESS INDEX

3	Name	Direct	Cross	Redirect	Recross
4	Horace Dalton Balmer	28	52		
5	(Resumed)		300		
6	William J. Frawley	113	121	127	128
7	Jerome J. Christian	129	155	213	237
8	James Steinberg	239	247		
9					
10	Francis Michael Dunham	270	291		

11                   EXHIBIT INDEX

12	<u>Government</u>	<u>Identification</u>	In <u>Evidence</u>
13	8		121
14	9	144	148
15			
16			

17                   Defendant

18	A	157	
19	A-1	158	198
20	A-2	188	
21			
22			
23			
24			
25			

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA

-against-

WYADELL EDMUNDS,

AFFIDAVIT IN SUPPORT OF  
MOTION FOR A NEW TRIAL

74 CR 474 RO

Defendant.

-----  
STATE OF NEW YORK)  
COUNTY OF NASSAU )ss.:

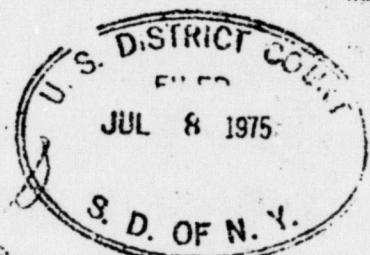
LAWRENCE W. KESSLER, being duly sworn, deposes and says:

I was assigned by the Hon. Richard Owens, on May 12, 1975 to represent WYADELL EDMUNDS, the defendant in the above-captioned criminal case.

In preparing for the trial of his case, I felt that it was necessary to have Sarah Roberts available as a potential witness for the defendant since it was possible that she might have been the informant and might therefore have had information useful to the defendant concerning the manner in which the narcotic drug found in his suitcase upon his arrest came to be there.

Upon the order of Judge Owen, Assistant United States Attorney Sear provided the last address known to him or the officers of the Drug Enforcement Agency Task Force who were involved in this case. That address was no longer being occupied by Sarah Roberts.

I then engaged two investigators to locate Sarah Roberts. They located her and served her with a subpoena.



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On May 29, 1975, Sarah Roberts appeared at the United States Courthouse and I interviewed her to determine whether her testimony might be useful to the defendant.

At that time she said that she had been sentenced to probation prior to April 30, 1974; that she was at Ms. Summers' home on April 30, 1974, but that she had not informed upon Mr. Edmunds nor given information to anyone who did so inform.

She also said that she had been substantially involved in the business of selling drugs prior to her arrest and sentence; that she knew many people involved in that business and if she were to have been an informant would have been able to give information about people much more heavily involved than Mr. Edmunds; that Mr. Edmunds was "small potatoes" in the drug world, and that she "spoke for him" (meaning that she made it possible for him to obtain possession of illegal drugs).

Since Detective Bahner had previously testified that the informant who gave information to him about Mr. Edmunds had not yet been sentenced on April 30, 1974, I concluded that if his testimony was truthful she could not be the informant. I therefore did not call her and convinced Mr. Edmunds to accept my determination.

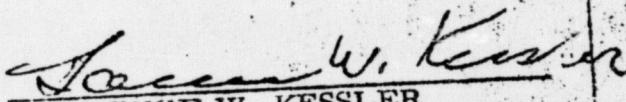
I, thus, was never able to investigate Mr. Edmunds' contention that the government informant and thereby the government had induced this crime by the creative activity of supplying the contraband. If Sarah Roberts had been the informant, her admitted role in supplying Mr. Edmunds with these drugs--a role which her admitted presence on April 30, 1974 suggests might have in fact been much greater--would have been extremely relevant to this defense. If she had brought

the drug with her from her residence in Cambria Heights, Queens to Mr. Edmunds in Manhattan (Note: 1-Why else did she make that trip?)

2-According to the testimony of Jerome Christian "Jr." had been "holding up" Mr. Edmunds, thus indicating that the drugs were received very close to, if not on, the date of his arrest) and then told Detective Bahner to arrest him, the creative activity specifically described as prohibited in, United States v. Mosley, 496 F. 2d 1012, 1016 (5th Cir. 1974).

"...[T]hat a defendant, where entrapment is an issue, may be acquitted for lack of pre-disposition, or, even though disposed, where the undercover agent supplies him with the contraband."

WHEREFORE, the defendant moves for a new trial and the revelation of the name of the informant.

  
LAWRENCE W. KESSLER

Sworn to before me this  
18<sup>th</sup> day of June, 1975.

Tanya McDougal  
Notary Public

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA

7CR 474

-against-

HON. R. OWENS, D.J.

VIADELL EDMUNDS,

NOTICE OF MOTION

Defendant.

PLEASE TAKE NOTICE, that upon the annexed affidavit of LAWRENCE W. KESSLER, attorney for the defendant in the above-captioned criminal case, upon the indictment and all papers filed and proceedings held herein, heretofore, will move this Court, before the HON. RICHARD OWENS, D.J., at 9:30 a.m. on May 19, 1975, at the United States District Courthouse for the Southern District of New York, Room , Foley Square, New York 10007, for an order:

1. suppressing all tangible property seized from the defendant at the time of his arrest;
2. requiring the United States Attorney to make SARAH ROBERTSON and RONNIE EVANS available for interview by counsel and as witnesses at trial, and/or to make available the informant herein, and
3. for such other and further relief as may seem proper.

Dated: May 16, 1975.

Respectfully submitted,

ONLY COPY AVAILABLE

LAWRENCE A. KESSLER  
Manhattan Law School  
Hempstead, New York 11550  
(516) 560-2884

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA

7CR 474

-against-

MABELL EDMUNDS,

AFFIDAVIT

Defendant.

-----X  
STATE OF NEW YORK )  
COUNTY OF NASSAU )ss.:

I, LAWRENCE W. KESSELEN, being duly sworn, deposes and says:

I. I am the attorney for MABELL EDMUNDS, the defendant in the above-captioned criminal case by appointment of the Hon. Richard Owens, P.J., on May 12, 1973, under the Criminal Justice Act, and make all statements herein under information and belief unless otherwise indicated.

a) Motion to Suppress.

On July 10, 1974, and September 10, 1974, a hearing on a motion to suppress was held, and said motion was thereafter denied.

At that hearing, the sole factor creating probable cause for the arrest and search of the defendant, was the testimony of Detective Horace D. Bahner that the arrest was made upon partially corroborated information supplied by a reliable informant.

Thus, crucial to the constitutionality of the search, was the question of the reliability of the informant. Spinelli v. U.S., 393 US 410 (1969), Aquilar v. Texas, 378 US 198 (1964). Detective Lahner established the reliability of the informer herein by his uncorroborated testimony that the informant had supplied information leading to five previous purchases.

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and three previous seizures of narcotics (Transcript, July 10, 1974, p. 9-- hereinafter to be referred to as "T.I."). The truthfulness of his testimony on this issue was the major issue of fact before the court on the suppression motion. Neither the informant nor other officials testified to substantiate the existence of an informant. The name of the informant was never revealed. Thus, his testimony and the validity of the search and arrest stand on the credibility of Detective Bahner.

Subsequent to the hearing and previous trial in this case, counsel came into possession of the sworn statement of a police officer which is in conflict with the testimony of Detective Bahner. Detective Bahner testified as follows:

"... And of this information previously supplied to you by this confidential informant, previous to April 30th, did such information include a tip concerning the defendant, Lyadell Edmunds?..."

A. Yes." T.I. - p.11....

"THE WITNESS: We relayed this information over to the Drug Enforcement Administration in Norfolk, Virginia, who relayed the information to the Police Department there.

THE COURT: And what happened with regard to seeing this man at or about the time of the expected arrival? Did that come to pass....

THE WITNESS: Yes. I wasn't involved in the investigation once it reached Norfolk, Virginia, but I was told by the Drug Enforcement Agent there that the defendant, Lyadell Edmunds, was arrested, I believe in a Holiday Inn Hotel or Motel in the---"

T.I. - p.12

He thus clearly alleges that the same informant -- known to him in his capacity as an investigator in New York -- gave him this information. This fact is the only investigable statement made by the witness concerning the informant. No other names of defendants, that the informant allegedly

identified, were given.

In a sworn statement, dated March 23, 1974, before the Justice of the Peace in Norfolk, Virginia, Officer C. J. Morgante stated that a search warrant should be issued because he had material facts constituting probable cause:

"From an informant who in the past has . . . given me information leading to the arrest of other persons involved in the drug scene, states to me that at the Holiday Inn...  
(emphasis added---see Appendix A for the complete statement of Officer Morgante)

The conflict between this statement and that of Detective Bahner is twofold. First, whether the informant gave the information to Bahner or Morgante. Second, whether the informant gave information in the past to Bahner or Morgante. This conflict casts doubt upon the testimony of Detective Bahner that the informant previously gave information to him. It casts doubt upon his testimony that the informant had supplied him information in the past. Since no other statement made by the Detective is verifiable, this conflict must be given heavy weight.

When an officer of the law testifies that information comes from an informant and then refuses to reveal the identity of the informant, the possibility of abuse is great. The statement of secret information is not subject to meaningful cross-examination. The judgment to permit such testimony is made only after balancing the constitutional rights of a criminal defendant against the needs of law enforcement. McCray v. Illinois, 386 U.S. 300 (1967); United States v. Comissiong, 429 F 2d 334 (2 Cir., 1970).

The crucial factor is the existence of a safeguard against fabrication. Comissiong, at p. 339.

When the testimony of the police officer is questioned, as it must be here, it should not be permitted to stand. 3

The danger of fabrication is particularly great when the defendant is known to law enforcement officials, for his physical identity can be so easily stated and used as supposed corroboration of the informant. It is interesting to note that in the trial of this case, the figure of the defendant was so familiar to the officers that he was recognized at from 50 to 60 feet. (Transcript of trial, December 5, 1974, p. 113 -- hereinafter to be called "T. S."). It must be assumed that such ready identification indicates prior familiarity and thus knowledge of his description cannot support the alleged informant as it did in Draper v. U.S., 358 U.S. 307 (1959). Of course, all of the allegations concerning what the informer said and its supposed corroboration rest upon the now questioned testimony of Detective Bahner. The sworn statement that an informant gave information to Officer Morgante about this defendant and apparently did not give it to Detective Bahner, as was his testimony, compels the questioning of the rest of his testimony about this very informer.

This new evidence therefore mandates the suppression of the evidence seized.

b) Production of Witnesses.

At both the suppression hearing and trial defendant requested the production for interview of the undercover informant. On both occasions the motion was denied.

Two factors require the granting of this motion, despite the above determinations.

i) The first is the existence of the above-described evidence questioning the veracity of Detective Bahner. The constitutional restriction upon the government's privilege to conceal the identify of informants is a, "voucher against fabrication." Commission, at p. 839.

The voucher can only be the credibility of the officer--government witness. Once that is breached by evidence of fabrication, the privilege vanishes. Detective Bahner's credibility has been seriously questioned on the vital issue of his prior relationship with the informant. His testimony by itself is no longer, "a sufficient voucher" within the meaning of Commissiong.

In bringing forth evidence of fabrication, the defendant has met an almost insurmountable burden. No names, dates or places were revealed by the witness to provide a basis for investigation. To deny production of the informant after this profer of proof by the defendant would be to grant a license to the police to fabricate at will. With the law protecting the informant's identity, with all facts surrounding prior transactions with the informant sealed as likely to point to his identity, no greater evidence of fabrication could be produced. Of course, a directly conflicting statement of fact as herein alleged is strong evidence. The informant should be produced.

2) The second is that the defendant states, that if there were drugs in his possession and if there was an informant, that Sarah Robertson is the source of any illegal drugs that are alleged to have been found in his possession, that she packed the bag in which the illegal items were allegedly found, that he was not present during this packing, and that he now believes that she is working for the government after having been arrested on narcotic charges along with her common law husband Ronnie Evans.

The present whereabouts of these two alleged witnesses are unknown to the defendant. If known to the government, both Brady v. Maryland, 373 U.S. 83 (1963) and Roviaro v. United States, 353 U.S. 53 (1957) require their production. 5

The allegation that this informant procured the illegal substances and placed them without the defendant's knowledge or consent into his possession converts Sarah Robertson, whether the informant or not, into a potentially valuable witness. Her location must therefore be revealed and/or she must be produced for interview.

The authority cited by the government supporting the request that production of the informant be denied is rendered inapposite by the identification of the identity and role of the informant in the substantive criminal act. Rugendorf v. United States, 376 U.S. 528 (1964) distinguishes Reviaro and permits nondisclosure only when the informant had not, "played a direct and prominent part, as the sole participant with the accused, in the very offense for which the latter was convicted" at p. 534.

Here it is alleged that Sarah Robertson procured the narcotics, planted them on the defendant and then either informed or had her paramour Ronnie Evans inform the officials of defendant's possession. Thus, these informers had a vital role in the crime and they must be produced.

WHEREFORE, the defendant moves for the suppression of all items seized from him and the production of the informer Sarah Robertson and Ronnie Evans or others for interview by counsel and testimony at trial.

---

LAWRENCE W. KESSLER

Sworn to before me this  
18th day of May, 1975.

---

Notary Public

## AFFIDAVIT FOR SEARCH WARRANT

Exhibit A

COMMONWEALTH OF VIRGINIA  
CITY OF NORFOLK, to wit:

BEFORE MR. Frank M. McNeely Jr., JUDGE OF THE PEACE,  
THE CITY AFORESAID, THIS DAY APPEARED Cpl. Maggadate  
A POLICE OFFICER, AND MADE AFFIDAVIT AS FOLLOWS:

(1) SUBSTANTIALLY THE OFFENSE IN RELATION TO WHICH SEARCH IS TO  
BE MADE: 160-54-5344-106-A & C

Pass of Heroin

(2) THE MATERIAL FACTS CONSTITUTING PROBABLE CAUSE FOR ISSUANCE  
OF THE SEARCH WARRANT:

I am an informant who is the first  
to give me information leading to  
the arrest of other persons involved  
in the drug trade. I state to you  
that at the Holiday Inn - Norfolk Room  
118, there are 2 P/F and 1 Blm  
from New York. He states he has  
been to this man's room apartment  
and has observed him, the informer  
is a user of Heroin, he states the  
girls names are Sara & Lorraine.  
Over

(3) WHAT IS TO BE SEARCHED FOR UNDER THE SEARCH WARRANT:

Heroin

(4) THE PLACE TO BE SEARCHED:

Holiday Inn Norfolk  
Norfolk Room 118 Cpl. Maggadate  
ATTY

SUBSCRIBED AND SWORN TO BEFORE ME, Frank M. McNeely Jr.  
Signature-JUDGE OF THE PEACE

~~SEARCH TESTED~~ HUGH T. STOVALL, CLERK

~~APR 23 1968~~ U.S. DISTRICT COURT, D.C.

120 pm

TIME

3-23-74

THIS DATE

Based on this information and knowing  
my informant I believe that there  
is presently Heroin at the above  
address, the address on the front of  
this search warrant. Immediate  
entry is requested for the  
above address (front). Immediate  
entry is necessary due to safety  
disposal of the drugs.

REO # 237  
Holiday Inn Scope, Room No. 143  
FILED; March 28, 1974 2:30 p.m.

Burch L. Stovall, freight  
By: [Signature] D.C.

ONLY COPY AVAILABLE



COPY RECEIVED

NOV 10 1975

THOMAS J. CAHILL  
U. S. ATTORNEY  
S. DIST. OF N. Y.